



01 AUG 2003

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In re Application of
GATHERAR, Nicholas et al.
Application No.: 09/890,900
PCT No.: PCT/GB00/00462
Int. Filing Date: 10 February 2000
Priority Date: 11 February 1999
Attorney Docket No.: FMCE-P067 US
For: SUBSEA COMPLETION
APPARATUS

DECISION ON
PETITION
UNDER 37 CFR 1.181

This decision is in response to "Petition to Revive an Application Abandoned Unavoidably Under 37 CFR 1.137(a)," filed with the United States Patent and Trademark Office on 27 December 2002. It has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 10 February 2000, applicants filed international application PCT/GB00/00462. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 17 August 2000. On 31 August 2000, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 13 August 2001 (11 August 2001 was a Saturday).

On 06 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 13 September 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 18 January 2002, applicants submitted a request for a refund.

On 03 December 2002, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements mailed 13 September 2001.

On 27 December 2002, applicants submitted the instant petition under 37 CFR 1.181, accompanied by an executed declaration.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) has been satisfied. Practitioner asserts that he did not receive the Notification of Missing Requirements.

Items (2) and (3) have not been met.

The declaration complies with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains abandoned.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to PCT Operations for consideration of the refund request.



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